

Broadcasting Board of Governors

§ 504.12

(d) Certification (authentication) of copies of records. The BBG may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the BBG at least 30 days before the date they will be needed. The request should be sent to the BBG General Counsel.

§ 504.9 Final determinations.

The General Counsel makes the final determination on demands or requests to employees for production of official records and information or testimony in litigation in which the BBG is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an BBG employee. The General Counsel's decision exhausts administrative remedies for discovery of the information.

§ 504.10 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of BBG employees including, for example:

- (1) Limiting the areas of testimony;
- (2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;
- (3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The BBG may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current BBG employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the BBG unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the BBG's approval.

§ 504.11 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the BBG may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original BBG records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official BBG records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 504.12 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 504.9, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate

§ 504.13

as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 504.13 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 504.14 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the BBG.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the BBG in its Freedom of Information Act regulations at 22 CFR Part 503.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current BBG em-

22 CFR Ch. V (4–1–09 Edition)

ployees and any record certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former BBG employees, the requester must pay applicable fees directly to the former BBG employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be \$10.00 or less.

Subpart D—Penalties

§ 504.15 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the BBG, or as ordered by a Federal court after the BBG has had the opportunity to be heard, may face penalties as provided in any applicable enforcement statute.

(b) A current BBG employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action and, if done for a valuable consideration, may subject that person to criminal prosecution.

PART 505—PRIVACY ACT REGULATION

Sec.

- 505.1 Purpose and scope.
- 505.2 Definitions.
- 505.3 Procedures for requests.
- 505.4 Requirements and identification for making requests.
- 505.5 Disclosure of information.
- 505.6 Medical records.
- 505.7 Correction or amendment of record.
- 505.8 Agency review of requests for changes.
- 505.9 Review of adverse agency determination.
- 505.10 Disclosure to third parties.
- 505.11 Fees.
- 505.12 Civil remedies and criminal penalties.
- 505.13 General exemptions (Subsection (j)).
- 505.14 Specific exemptions (Subsection (k)).
- 505.15 Exempt systems of records used.